

CNICA Mediation Rules, 2006

Short Title and Scope

1.(a) These rules may be called the CNICA Mediation Rules, 2006

(b) These rules shall apply where the parties agree in writing that the disputes between them shall be settled under the CNICA Mediation Rules, 2006 and any amendments thereto, at the time the demand for, or submission to, mediation is received by CNICA Mediation Centre.

2 Definitions

(a) “CNICA Mediation Centre” means the Council for National and International Commercial Arbitration’s Mediation Centre, as the case may be, any of its office administered by the Board of Trustees of the Trust for Alternative Disputes Resolution.

(b) “International Mediation” means a mediation relating to disputes between the parties where at least one of the parties is:

(i) an individual who is a national of, or habitually resident in, any country other than India; or

(ii) a body corporate which is incorporated in any country other than India;
or

(iii) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv) The Government of a foreign country.

(c) “Mediation” means a process in which an impartial third party assists disputants in finding a mutually acceptable solution to their dispute.

(d) “Mediation Agreement” means an agreement by the parties to submit to mediation any and all conflict(s) /controversy(ies) / dispute(s) / difference(s) / claim(s) / claim(s) in tort arising out of or in connection with the parties who agree to settle the same by mediation, may be in the form of a mediation clause in a contract or in the form of a separate contract.

(e) “Mediator” includes a sole mediator or all the mediators where more than one is appointed.

(f) “Panel of Mediators” means the panel of persons approved and maintained from time to time by the CNICA Mediation Centre to act as mediator.

(g) “Appendix” means an appendix to these rules.

3. Commencement of the Mediation

(a) A party to a mediation agreement who desires to commence mediation shall submit a request for mediation in writing to CNICA Mediation Centre. The party shall at the same time send a copy of the request for mediation to the other party.

(b) The request for mediation shall contain or be accompanied by

(i) the names, addresses and telephone numbers, facsimile numbers, email-id or other communication references of the parties to the dispute and of the representative of the party filing the request for mediation;

(ii) a copy of the mediation agreement; and

(iii) a brief statement of the nature of the dispute.

(c) The CNICA Mediation Centre shall forthwith inform the parties in writing of the receipt by it of the request for mediation and of the date of the hearing of the mediation.

(d) On the date of the hearing of the mediation or any subsequent dates stipulated for the purpose the other party may file a brief statement summarizing his case.

(e) The date of the commencement of the mediation shall be the date on which the request for mediation is received by the other party.

4. Appointment of the Mediator

(a) Unless otherwise agreed by the parties, a person of any nationality may be a mediator, appointed by the CNICA Mediation Centre from its panel of Mediators.

(b) The prospective mediator shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the mediation to be conducted expeditiously.

- (c) The mediator shall be neutral, impartial and independent.
- (d) Mediation shall be by a sole mediator or as otherwise agreed by the parties.
- (e) No person shall act as mediator in any dispute in which that person has any financial or personal interest in the result of the mediation except by consent of the parties.
- (f) The proposed mediator shall disclose to the parties and to the CNICA Mediation Centre any circumstances likely to create a presumption of bias or prevent a prompt resolution of the dispute.
- (g) If any party takes objection to the proposed mediator within 7 days he shall not be appointed. In such case the CNICA Mediation Centre shall nominate another suitable mediator and whose decision shall be final.

5. Disqualification of Mediator

The following persons shall be deemed to be disqualified for being empanelled as mediators:

- (a) any person who has been adjudged as insolvent or persons
 - (i) against whom criminal charges involving moral turpitude are framed by a criminal court and are pending, or
 - (ii) persons who have been convicted by a criminal court for any offence involving moral turpitude;
- (b) any person against whom disciplinary proceedings have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment.
- (c) any person who is interested or connected with the subject-matter of dispute or is related to any one of the parties or those who represent them, unless such objection is waived by all the parties in writing
- (d) any legal practitioner who represents any of the parties in any judicial or arbitral proceedings.

6. Replacement of Mediator

- (a) The CNICA Mediation Centre shall replace and appoint mediator wherever the appointed mediator is unable to serve promptly.

(b) If any mediator becomes unwilling or unable or incapable to serve, or is disqualified, the CNICA Mediation Centre shall replace and appoint mediator.

7. Representation of Parties and Participation in hearings.

- (a) The parties may be represented or assisted in their meetings with the mediator.
- (b) Immediately after the appointment of the mediator, the names and addresses of persons authorized to represent a party, and the names and positions of the persons who will be attending the hearings of the parties with the mediator on behalf of that party, shall be communicated by that party to the other party, the mediator and the CNICA Mediation Centre.

8. Conduct of the Mediation

(a) Unless otherwise agreed by the parties, the mediation shall be conducted in accordance with the CNICA Mediation Rules, 2006.

(b) The parties shall co-operate in good faith with the mediator to advance the mediation as expeditiously as possible.

(c) Each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.

(d) The mediator shall be free to meet and to communicate separately with a party on the clear understanding that information given at such meetings and in such communications shall not be disclosed to the other party without the express authorization of the party giving the information.

(e) The mediator may conduct joint and separate meetings with the parties and to make oral or written recommendations for settlement.

(f) Any party may at any time submit to the mediator, for consideration by the mediator only, written information or materials which the party considers to be confidential. The mediator shall not, without the written authorization of that party, disclose such information or materials to the other party.

(g) The mediator may as and when require obtain expert advice concerning technical aspect of the dispute, provided that the parties agree and bear the costs of obtaining such advice.

(h) The mediation shall be held at CNICA Mediation Centre's venue.

(i) The mediator shall fix the date and time of each hearing on consultation with the parties.

(j) The parties and their authorized representatives may attend mediation hearings and other persons may attend only with the permission of the parties and with the consent of the mediator.

9. Mediator not bound by Evidence Act, 1872 or Code of Civil Procedure, 1908.

The mediator shall not be bound by the Evidence Act, 1872 or the Code of Civil Procedure 1908, but shall be guided by principles of fairness and justice, have regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute.

10. Role of the Mediator

The mediator shall promote the settlement of the issues in dispute between the parties in any manner that the mediator believes to be appropriate, but shall have no authority to impose a settlement on the parties.

11. Parties alone responsible for taking decision

_____The Parties must understand that the mediator only facilitates in arriving at a decision to resolve disputes and that he will not and cannot impose any settlement nor does the mediator give any warranty that the mediation will result in a settlement.

12. Confidentiality

(a) No recording of any kind shall be made of any meetings of the parties with the mediator.

(b) Each person involved in the mediation, shall respect the confidentiality of the mediation and may not, unless otherwise agreed by the parties and the mediator, use or disclose to any outside party any information concerning, or obtained in the course of the mediation.

(c) Unless otherwise agreed by the parties, each person involved in the mediation shall, at the end of each hearing of the mediation, return to the party providing it, any brief,

document or other materials supplied by a party, without retaining any copy thereof. Any notes taken by a person concerning the hearings of the parties with the mediator shall be destroyed on the termination of the mediation.

(d) Unless otherwise agreed by the parties, the mediator and the parties shall not introduce as evidence or in any manner whatsoever in any judicial or arbitration proceeding;

(i) any views expressed or suggestions made by a party with respect to a possible settlement of the dispute;

(ii) any admissions made by a party in the course of the mediation;

(iii) any proposals made or views expressed by the mediator;

(iv) the fact that a party had or had not indicated willingness to accept any proposal for settlement made by the mediator or by the other party.

13. Settlement Agreement.

(a) If terms are arrived and agreed in settlement of dispute, the parties with the assistance of the mediator shall draw up and sign a settlement agreement setting out such terms.

(b) By signing the settlement agreement the parties agree to be bound by its terms.

14. Termination of the Mediation

(a) The mediation shall be terminated

(i) by on the date signing of a settlement agreement by the parties; or

(ii) by on the date of a written declaration of the mediator, after consultation with the parties, to the effect that further reports at meditation are no longer justified;

(iii) by on the date of a written declaration of the parties addressed to the mediator to the effect that the mediation proceedings are terminated; or

(iv) by on the date of a written declaration of a party to the other party and the mediator, if appointed, at any time after attending the first meeting of the

parties with the mediator and before the signing of any settlement agreement, to the effect that mediation proceedings are terminated.

(b) Upon the termination of the mediation, the mediator shall promptly send to the CNICA Mediation Centre a notice in writing that the mediation is terminated and shall indicate the date on which it terminated, whether or not the mediation resulted in a settlement of the dispute and, if so, whether the settlement was full or partial. The mediator shall send to the parties a copy of the notice so addressed to the CNICA Mediation Centre.

(c) The CNICA Mediation Centre shall keep the said notice of the mediator confidential and shall not, without the written authorization of the parties, disclose either the existence or the result of the mediation to any person.

(d) The CNICA Mediation Centre may, however, include information concerning the mediation in any aggregate statistical data that it publishes concerning its activities, provided that such information does not reveal the identity of the parties or enable the particular circumstances of the dispute to be identified.

(e) Unless required by a court of law or authorized in writing by the parties, the mediator shall not act in any capacity whatsoever, otherwise than as a mediator, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the subject matter of the dispute.

15. Subsequent Proceedings.

Unless all the parties agree in writing, the mediator shall not act as an arbitrator or as a representative or as a counsel for a party in any arbitral or judicial proceedings in respect of a dispute that was the subject matter of the mediation.

16. Administrative Fee of the Centre

(a) The request for mediation shall be subject to the payment of administrative fees to the CNICA Mediation Centre which shall be in the account of Trust for Alternative Disputes Resolution. The amount of the administrative fees shall be fixed in accordance with the Appendix I, Item A or Appendix II, Item A as the case may be and as applicable on the date of the request for mediation.

(b) The administrative fee shall be borne equally by both the parties or as otherwise agreed by them and the same shall not be refundable.

(c) No action shall be taken by the CNICA Mediation Centre on a request for mediation until the administrative fee has been paid.

(d) If a party who has filed a request for mediation fails to pay, within the time stipulated or such time as may be extended by the CNICA Mediation Centre, it shall be deemed to have withdrawn its request for mediation.

17. Fees of the Mediator

The amount and currency of the fees of the mediator which shall be borne equally by the parties or as otherwise agreed by them and the modalities and timing of their payment shall be fixed by the CNICA Mediation Centre, in accordance with the Appendix I, Item B or Appendix II, Item B as the case may be and as applicable on the date of appointment of mediator.

18. Deposits

(a) The Centre may require the parties to make additional deposits.

(b) If a party fails to pay, within the time stipulated or such time as may be extended by the CNICA Mediation Centre, to pay the required deposit, the mediation shall be deemed to be terminated. The CNICA Mediation Centre shall, by notice in writing, inform the parties and the mediator accordingly and indicate the date of termination.

19. Waiver of Defamation

The parties and, by accepting appointment, the mediator agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the mediation shall not be relied upon to be found or maintain any action for defamation, libel, slander or any related complaints, and this rules may be pleaded in bar to any such action.

20. Suspension of Running of Limitation

The parties agree that, to the extent permitted by the applicable law, the running of the limitation period under the Limitation Act, 1963 or any equivalent law shall be suspended in relation to the dispute that is the subject of the mediation from the date of the commencement of the mediation until the date of the termination of the mediation.

21. Bar of Judicial and Arbitral Proceedings

During the mediation proceedings the parties are barred from instituting any other proceedings whether judicial or arbitral, to resolve the dispute which is the subject of the mediation proceedings, unless such proceedings are necessary for preserving their rights.

22. Amendment

The CNICA Mediation Centre may revise, amend or alter these rules or the schedule of fees and other monies to be charged and paid as and when expedient and necessary.

23. Interpretation

If any question relating to interpretation of these rules or any procedural matters there under, the decision of the CNICA Mediation Centre shall be final and binding on the parties.

24. Exclusion of Liability

The Trust, The Chairman, Board of Trustees, Officers of the Trust, CNICA Mediation Centre, or any member thereof shall not be liable for any act or omission in what ever capacity they may have acted in connection with or in relation to any mediation under these rules. No party shall bring or prosecute any suit or proceedings what ever in respect thereof.

APPENDIX I

ITEM A.

DOMESTIC MEDIATION

ADMINISTRATIVE FEE

	<u>Amount in dispute</u> (in Rupees)	<u>Amount of Fees</u> (in Rupees)
(i)	Below 25,000	450
(ii)	25,001 - 50,000	650
(iii)	50,001 - 1,00,000	750
(iv)	1,00,001 - 2,00,000	850
(v)	2,00,001 - 3,00,000	1000
(vi)	3,00,001 - 4,00,000	1250

(vii)	4,00,001 - 5,00,000	2,000	
(viii)	5,00,001-10,00,000	2,000 plus 0.5 percent of the amount by which the total amount in dispute exceeds 5,00,000	
(ix)	10,00,001 – 50,00,000	4000 plus 0.25 percent of the amount by which the total amount in dispute exceeds 10,00,000	
(x)	50,00,001 - 1,00,00,000	14,000 plus 0.125 percent of the amount by which the total amount in dispute exceeds 50,00,000 subject	to the maximum of 30,000

Note: Where the total amount in dispute exceeds Rs.1,00,00,000 (or) the dispute cannot be expressed in terms of money, the CNICA Mediation Centre shall determine the amount of administrative fees, in its discretion, in each case.

MEDIATOR'S FEE

ITEM B

<u>Amount in dispute</u> (in Rupees)	<u>Amount of fee</u> (in Rupees)
(i) Below 25,000	500
(ii) 25,001 - 50,000	1000
(iii) 50,001 - 1,00,000	1250
(iv) 1,00,001 - 2,00,000	1500
(v) 2,00,001 - 3,00,000	1750
(vi) 3,00,001 - 4,00,000	2000
(vii) 4,00,001 - 5,00,000	2500
(viii) 5,00,001-10,00,000	2,500 plus 0.5 percent of the amount by which the total amount in dispute exceeds 5,00,000
(ix) 10,00,001-50,00,000	5,000 plus 0.25 percent of the amount by which the total

amount in dispute exceeds
10,00,000

(x) 50,00,001 - 1,00,00,000 15,000 plus 0.125 percent
of the amount by which the
total amount in dispute
exceeds 50,00,000 subject to the
maximum of 1,00,000

Note 1 Where the total amount in dispute exceeds Rs.1,00,00,000 or the dispute cannot be expressed in terms of money, the CNICA Mediation Centre shall determine the amount of fee, in its discretion, in each case.

2. In the case of more than one mediator the fees shall be the same, in addition to that of the fees of the sole Mediator.

APPENDIX II

ITEM A.

INTERNATIONAL MEDIATION

ADMINISTRATIVE FEE

<u>Amount in dispute</u>	<u>Amount of Fee</u>
(in US \$)	(in US \$)
(i) Below 50,000	250
(ii) 50,001-1,00,000	250 plus 1 percent of the amount which the total amount in dispute exceeds 50000
(iii) 1,00,001 -2,50,000	750 plus 0.5 percent of the amount by which the total amount in dispute exceeds 100000
(iv) 2,50,001 – 5,00,000	1500 plus 0.25 percent of the amount by which the total amount in dispute exceeds 250000
(v) 5,00,001 – 10,00,000	2125 plus 0.125 percent of the amount by which the total amount dispute exceeds 500000 subject the maximum of 5000

Note: Where the total amount in dispute exceeds USD 10,00,000 or the dispute cannot be expressed in terms of money, the CNICA Mediation Centre shall determine the amount of administrative fees, in its discretion, in each case.

MEDIATOR’S FEE

ITEM B

<u>Amount in dispute</u>	<u>Amount of Fee</u>
(in US \$)	(in US \$)
(i) Below 50,000	1,000
(ii) 50,001 - 1,00,000	1000 plus 1 percent of the amount by which the total amount in dispute exceeds 50000
(iii) 1,00,001 - 2,50,000	1500 plus 0.5 percent of amount by which the total amount in dispute exceeds 100000
(iv) 2,50,001 - 5,00,000	2250 plus 0.25 percent of the amount by which the total amount in dispute exceeds 250000
(v) 5,00,001 - 10,00,000	2875 plus 0.125 percent of the amount by which the total amount in dispute exceeds 500000 subject to the maximum of 50000

Note 1 Where the total amount in dispute exceeds USD 10,00,000 or the dispute cannot be expressed in terms of money, the CNICA Mediation Centre shall determine the amount of fees, in its discretion, in each case..